

ASSEMBLY BILL

No. 1012

Introduced by Assembly Member Nation

February 22, 2005

An act to amend Sections 515 and 515.5 of the Labor Code, relating to overtime.

LEGISLATIVE COUNSEL'S DIGEST

AB 1012, as introduced, Nation. Overtime compensation.

Existing law authorizes the Industrial Welfare Commission to establish exemptions from overtime wage requirements for certain employees.

This bill would make technical, nonsubstantive changes to existing law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 515 of the Labor Code is amended to
2 read:
3 515. (a) The Industrial Welfare Commission may establish
4 exemptions from the requirement that an overtime rate of
5 compensation be paid pursuant to Sections 510 and 511 for
6 executive, administrative, and professional employees, provided
7 that the employee is primarily engaged in the duties that meet the
8 test of the exemption, customarily and regularly exercises
9 discretion and independent judgment in performing those duties,
10 and earns a monthly salary equivalent to no less than two times
11 the state minimum wage for full-time employment. The

1 commission shall conduct a review of the duties that meet the test
2 of the exemption. The commission may, based upon this review,
3 convene a public hearing to adopt or modify regulations at that
4 hearing pertaining to duties that meet the test of the exemption
5 without convening wage boards. Any hearing conducted pursuant
6 to this subdivision shall be concluded not later than July 1, 2000.

7 (b) (1) The commission may establish additional exemptions
8 to hours of work requirements under this division where it finds
9 that hours or conditions of labor may be prejudicial to the health
10 or welfare of employees in any occupation, trade, or industry.
11 This paragraph shall become inoperative on January 1, 2005.

12 (2) Except as otherwise provided in this section and in
13 subdivision (g) of Section 511, nothing in this section requires
14 the commission to alter any exemption from provisions
15 regulating hours of work that was contained in any valid wage
16 order in effect in 1997. Except as otherwise provided in this
17 division, the commission may review, retain, or eliminate any
18 exemption from provisions regulating hours of work that was
19 contained in any valid wage order in effect in 1997.

20 (c) For the purposes of this section, “full-time employment”
21 means employment in which an employee is employed for 40
22 hours per week.

23 (d) For the purpose of computing the overtime rate of
24 compensation required to be paid to a nonexempt full-time
25 salaried employee, the employee’s regular hourly rate shall be
26 $\frac{1}{40}$ th of the employee’s weekly salary.

27 (e) For the purposes of this section, “primarily” means more
28 than one-half of the employee’s worktime.

29 (f) (1) In addition to the requirements of subdivision (a),
30 registered nurses employed to engage in the practice of nursing
31 shall not be exempted from coverage under any part of the orders
32 of the Industrial Welfare Commission, unless they individually
33 meet the criteria for exemptions established for executive or
34 administrative employees.

35 (2) This subdivision does not apply to any of the following:

36 (A) A certified nurse midwife who is primarily engaged in
37 performing duties for which certification is required pursuant to
38 Article 2.5 (commencing with Section 2746) of Chapter 6 of
39 Division 2 of the Business and Professions Code.

1 (B) A certified nurse anesthetist who is primarily engaged in
2 performing duties for which certification is required pursuant to
3 Article 7 (commencing with Section 2825) of Chapter 6 of
4 Division 2 of the Business and Professions Code.

5 (C) A certified nurse practitioner who is primarily engaged in
6 performing duties for which certification is required pursuant to
7 Article 8 (commencing with Section 2834) of Chapter 6 of
8 Division 2 of the Business and Professions Code.

9 (D) Nothing in this paragraph ~~shall exempt~~ *exempts* the
10 occupations set forth in subparagraphs (A), (B), and (C) from
11 meeting the requirements of subdivision (a).

12 SEC. 2. Section 515.5 of the Labor Code is amended to read:

13 515.5. (a) Except as provided in subdivision (b), an employee
14 in the computer software field ~~shall be~~ *is* exempt from the
15 requirement that an overtime rate of compensation be paid
16 pursuant to Section 510 if all of the following apply:

17 (1) The employee is primarily engaged in work that is
18 intellectual or creative and that requires the exercise of discretion
19 and independent judgment, and the employee is primarily
20 engaged in duties that consist of one or more of the following:

21 (A) The application of systems analysis techniques and
22 procedures, including consulting with users, to determine
23 hardware, software, or system functional specifications.

24 (B) The design, development, documentation, analysis,
25 creation, testing, or modification of computer systems or
26 programs, including prototypes, based on and related to; user or
27 system design specifications.

28 (C) The documentation, testing, creation, or modification of
29 computer programs related to the design of software or hardware
30 for computer operating systems.

31 (2) The employee is highly skilled and is proficient in the
32 theoretical and practical application of highly specialized
33 information to computer systems analysis, programming, and
34 software engineering. A job title shall not be determinative of the
35 applicability of this exemption.

36 (3) The employee's hourly rate of pay is not less than
37 forty-one dollars (\$41.00). The Division of Labor Statistics and
38 Research shall adjust this pay rate on October 1 of each year to
39 be effective on January 1 of the following year by an amount

1 equal to the percentage increase in the California Consumer Price
2 Index for Urban Wage Earners and Clerical Workers.

3 (b) The exemption provided in subdivision (a) does not apply
4 to an employee if any of the following apply:

5 (1) The employee is a trainee or employee in an entry-level
6 position who is learning to become proficient in the theoretical
7 and practical application of highly specialized information to
8 computer systems analysis, programming, and software
9 engineering.

10 (2) The employee is in a computer-related occupation but has
11 not attained the level of skill and expertise necessary to work
12 independently and without close supervision.

13 (3) The employee is engaged in the operation of computers or
14 in the manufacture, repair, or maintenance of computer hardware
15 and related equipment.

16 (4) The employee is an engineer, drafter, machinist, or other
17 professional whose work is highly dependent upon or facilitated
18 by the use of computers and computer software programs and
19 who is skilled in computer-aided design software, including
20 CAD/CAM, but who is not in a computer systems analysis or
21 programming occupation.

22 (5) The employee is a writer engaged in writing material,
23 including box labels, product descriptions, documentation,
24 promotional material, setup and installation instructions, and
25 other similar written information, either for print or for onscreen
26 media or who writes or provides content material intended to be
27 read by customers, subscribers, or visitors to computer-related
28 media such as the World Wide Web or ~~CD-Roms~~ *CD-ROMs*.

29 (6) The employee is engaged in any of the activities set forth
30 in subdivision (a) for the purpose of creating imagery for effects
31 used in the motion picture, television, or theatrical industry.